NG AUN SAY & SONS REALTY SDN BHD

v.

MAGNASARI SDN BHD & ORS AND ANOTHER APPEAL

COURT OF APPEAL, PUTRAJAYA
ABDUL MALIK ISHAK JCA
LINTON ALBERT JCA
MOHAMAD ARIFF YUSOF JCA
[CIVIL APPEALS NO: A-01-135-2011 & A-01-141-2011]
8 MARCH 2013

CIVIL PROCEDURE: *Appeal - Interference by appellate court - Whether findings of Judicial Commissioner went against weight of evidence*

LAND LAW: *Acquisition of land - Compulsory acquisition - Whether acquisition under Land Acquisition Act could be challenged - Whether acquiring authority complied with statutory procedure - Whether authority misconstrued powers or acted in bad faith or with gross unreasonableness - Whether acquisition for public purpose - Whether authority considered development approval already granted - Land Acquisition Act 1960, ss. 3(1)(b), 4, 3A(2)*

STATUTORY INTERPRETATION: *Construction of statutes - Whether Committee that considered proposal that land to be compulsorily acquired was legally constituted - Plain meaning rule - Whether to be adopted in construing s. 3C(2)(v) Land Acquisition Act 1960*

Ng Aun Say & Sons Realty Sdn Bhd ('NASSR') and Magnasari Sdn Bhd ('Magnasari') were developers and proprietors of adjoining plots of land in Daerah Manjung. After NASSR had embarked upon a housing project, it realised that its land lacked access to the main road. Consequently, it applied to the State Authority with a proposal that the strip of land with access to the main road that laid on Magnasari's land ('PT16225'), be compulsorily acquired for the purpose of constructing an access road to the housing development on its land. The State Authority approved the proposed compulsory acquisition for the purpose of a road reserve on condition that NASSR pays Magnasari the compensation sum of RM274,600. Thus, PT16225 became the subject matter of a compulsory acquisition under s. 3(1)(b) of the Land Acquisition Act 1960 ('the Act'). Magnasari challenged the acquisition by arguing that the acquisition was for the private

development project of NASSR at the expense of Magnasari and not for the purpose of any public utility. Consequently, Magnasari commenced a writ action against the State Authority and NASSR for a declaration that the decision to compulsorily acquire the land was unlawful as the State Authority had misconstrued its powers under the Act, or had acted in bad faith or with gross unreasonableness. Magnasari also submitted that the Majlis Perbandaran Manjung had granted it approval to temporary stalls on its land and that this approval constituted 'developmental approval'. It was thus Magnasari's contention that in such circumstances, the State Authority should not have considered NASSR's application for the compulsory acquisition of PT16225. The Judicial Commissioner ('JC') concluded that there existed a serious non-compliance with the statutory provisions and a misconstruction of the law in respect of the functions and powers of the agencies of the State Authority when it supported NASSR's application. The JC was also of the opinion that the State Authority had acted in bad faith and was biased in approving the application by NASSR. As such, the JC allowed Magnasari's claim for, *inter alia,* a declaration that the decision of the State Authority to acquire the land was unlawful and void. The present two appeals against Magnasari arose from that decision and were heard together.

Held (allowing the appeals with costs)

Per Abdul Malik Ishak JCA:

(1) The argument that there was a defect in the composition of the committee, which considered the proposal that PT16225 be compulsorily acquired, had no merit. Suffice to say that under s. 3C(2)(v) of the Act, it was for the State Secretary as Chairman of the committee to decide whether to appoint representatives of related government departments and agencies to sit in the committee. The plain meaning rule should be adopted in construing s. 3C(2)(v) of the Act. Thus, the committee looking into the application, was legally constituted and was competent to decide and to receive the recommendation from the State Economic Planning Unit. As such, the statutory procedure adopted by the acquiring authority was above board and beyond reproach. (paras 15-19)

Per Mohamad Ariff Yusof JCA:

(1) An acquisition under the Act could not be generally challenged, unless the plaintiff had established that the acquiring authority had misconstrued its powers or had acted in bad faith or with gross unreasonableness. In the present case there was no basis for the JC to find that the State Authority had acted in bad faith or had misconstrued its statutory powers or had acted in gross unreasonableness. The findings of the JC were perverse and against the weight of evidence. The major errors of law and a misappreciation of the evidence by the JC invited appellate intervention. (paras 36 & 37)

(2) When administrative powers were granted to agencies of the government, they had to be properly read against the overall context of the relevant statute, and the various relevant statutory provisions had to be read harmoniously. It would not be the proper function of the court to narrow down an ostensibly broad conferment of administrative powers, since to do so would defeat the statutory objective. Hence, within the context of the Act, it would not be the case that the Land Administrator had to reject outright an application for compulsory acquisition where there was a development approval granted to the registered proprietor of the land intended to be acquired. (para 36)

(3) The statutory formula did not prohibit a compulsory acquisition outright simply because there existed a development approval granted in respect of the land, but made the intended acquisition subject to the requirement of 'public utility' and a consideration as to whether it would be appropriate in the circumstances for the registered proprietor to participate in the project. In the present case, the land was to be acquired to construct an access road and as such, it was not necessary to have the participation of the registered proprietor since it would not be appropriate in the circumstances. (para 36)

Bahasa Malaysia *Translation Of Headnotes*

Ng Aun Say & Sons Realty Sdn Bhd ('NASSR') dan Magnasari Sdn Bhd ('Magnasari') merupakan pemaju dan pemilik lot tanah bersebelahan di Daerah Manjung. Setelah NASSR memulakan suatu projek perumahan, ia menyedari bahawa tanahnya

kekurangan laluan ke jalan utama. Dengan itu, ia memohon kepada Pihak Berkuasa Negeri dengan cadangan agar susur tanah dengan laluan ke jalan utama yang berada di atas tanah Magnasari ('PT16225') diambil secara paksa bagi tujuan membina jalan laluan ke projek perumahan di atas tanahnya. Pihak Berkuasa Negeri meluluskan pengambilan secara paksa yang dicadangkan bagi tujuan rezab jalan dengan syarat bahawa NASSR membayar kepada Magnasari pampasan sejumlah RM274,600. Oleh itu, PT16225 menjadi subjek perkara pengambilan secara paksa di bawah s. 3(1)(b) Akta Pengambilan Tanah 1960 ('Akta'). Magnasari mencabar pengambilan tanah tersebut dengan menghujahkan bahawa pengambilan tanah tersebut adalah untuk projek pembangunan swasta oleh NASSR dengan menjejaskan Magnasari dan bukan untuk apa-apa tujuan utiliti awam. Oleh itu, Magnasari memulakan satu tindakan writ terhadap Pihak Berkuasa Negeri dan NASSR untuk deklarasi bahawa keputusan pengambilan tanah tersebut secara paksa adalah tidak sah kerana Pihak Berkuasa Negeri telah tersalahtafsir kuasanya di bawah Akta, atau telah bertindak dengan niat jahat atau secara amat tidak munasabah. Magnasari juga menghujahkan bahawa Majlis Perbandaran Manjung telah memberikan kelulusannya untuk gerai-gerai sementara berada di atas tanahnya dan kelulusan ini membentuk 'developmental approval'. Oleh itu Magnasari menghujahkan bahawa dalam keadaan tersebut Pihak Berkuasa Negeri tidak sepatutnya mempertimbangkan permohonan NASSR untuk pengambilan secara paksa PT16225. Pesuruhjaya Kehakiman ('PK') memutuskan bahawa terdapat ketidakpatuhan yang serius terhadap peruntukan statutori dan salah tafsir undang-undang berkaitan fungsi dan kuasa-kuasa agensi Pihak Berkuasa Negeri apabila ia menyokong permohonan NASSR. PK juga berpendapat bahawa Pihak Berkuasa Negeri telah bertindak dengan niat jahat dan berat sebelah dalam meluluskan permohonan oleh NASSR. Dengan itu, PK membenarkan tuntutan Magnasari bagi, antara lain, deklarasi bahawa keputusan Pihak Berkuasa Negeri untuk mengambil tanah tersebut adalah tidak sah dan batal. Kedua-dua rayuan ini terhadap Magnasari berbangkit daripada keputusan tersebut dan didengar bersama.

Diputuskan (membenarkan rayuan dengan kos)
Oleh Abdul Malik Ishak HMR:

(1) Hujahan bahawa terdapat kecacatan dalam kandungan ahli-ahli jawatankuasa yang mempertimbangkan cadangan bahawa PT16225 diambil secara paksa, tidak bermerit. Adalah mencukupi jika dinyatakan bahawa di bawah s. 3C(2)(v) Akta,

adalah untuk Setiausaha Negeri sebagai Pengerusi jawatankuasa untuk memutuskan sama ada hendak melantik wakil-wakil jabatan kerajaan yang berkenaan dan agensi-agensi untuk membentuk jawatankuasa tersebut. Peraturan maksud jelas perlu digunakan dalam mentafsir s. 3C(2)(v) Akta. Oleh itu, jawatankuasa yang mempertimbangkan permohonan tersebut telah dibentuk secara sah dan kompeten untuk memutuskan dan menerima cadangan daripada Unit Perancangan Ekonomi Negeri. Dengan itu, prosedur statutori yang digunapakai oleh pihak berkuasa yang membuat pengambilan adalah pada tahap yang memuaskan dan tanpa kecacatan.

Per Mohamad Ariff Yusof HMR:

(1) Sesuatu pengambilan tanah di bawah Akta tidak boleh, secara umumnya, dicabar kecuali jika plaintif membuktikan bahawa pihak berkuasa yang mengambil tanah telah menyalahtafsir kuasa-kuasanya atau telah bertindak dengan niat jahat atau secara amat tidak munasabah. Dalam kes ini, tidak ada asas untuk PK mendapati bahawa Pihak Berkuasa Negeri telah bertindak dengan niat jahat atau telah menyalahtafsir kuasa-kuasa statutorinya atau telah bertindak secara amat tidak munasabah. Dapatan-dapatan PK adalah khilaf dan bertentangan dengan beban keterangan. Kekhilafan undang-undang yang besar dan salah tafsir keterangan oleh PK mewajarkan campur tangan peringkat rayuan.

(2) Apabila kuasa-kuasa pentadbiran diberikan kepada agensi-agensi kerajaan, ia perlu dibaca dengan sewajarnya terhadap konteks keseluruhan statut yang berkenaan, dan peruntukan pelbagai statutori yang relevan perlu dibaca secara harmoni. Ia bukan fungsi wajar mahkamah untuk menjadikan pemberian luas kuasa pentadbiran yang zahir lebih sempit, kerana ia akan menyangkal objektif statutori. Maka, dalam konteks Akta, ia bukan kes bahawa Pentadbir Tanah perlu menolak dengan serta merta, sesuatu permohonan untuk pengambilan secara paksa di mana terdapat kelulusan pembangunan diberikan kepada pemilik berdaftar tanah yang diniatkan untuk diambil. Formula statutori tidak menghalang pengambilan secara paksa dengan serta merta semata-mata kerana terdapat kelulusan pembangunan yang diberikan berkaitan dengan tanah tersebut, tetapi menjadikan

pengambilan yang diniatkan tertakluk kepada keperluan 'utiliti awam' dan pertimbangan sama ada ia adalah wajar dalam keadaan tersebut untuk pemilik berdaftar menyertai projek tersebut. Dalam kes ini, tanah tersebut akan diambil untuk membina jalan laluan dan oleh itu, tidak memerlukan penyertaan pemilik berdaftar kerana ia tidak wajar dalam hal keadaan tersebut.

Case(s) referred to:

Duport Steels Ltd and Others v. Sirs and Others [1980] 1 All ER 529 ***(refd)***

Honan Plantations Sdn Bhd v. Kerajaan Negeri Johor & Anor [1998] 3 CLJ 253 CA ***(refd)***

In re J P Linahan 138 F2d 650 ***(refd)***

Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v. Ong Gaik Kee [1983] 1 LNS 14 FC ***(refd)***

Stamford Holdings Sdn Bhd v. Kerajaan Negeri Johor & Ors [1998] 1 CLJ 960 CA ***(refd)***

The Sussex Peerage Case [1844] 11 CI & Fin 85 ***(refd)***

Legislation referred to:

Land Acquisition Act 1960, ss. 2(1), 3(1)(b), 3A(1)(a), (b), (c), (d), (2), (3), (7), 3C(2)(a)(i), (ii), (iii), (iv), (v), (3), (6), 4, 8(1), (3)

For the appellants - Loong Chet Siean; M/s Loong & Assocs
- Mohd Hamzah Ismail; Assistant State Legal Advisor
For the respondent - Nga Hock Cheh; M/s Nga Hock Cheh & Co

[Appeal from High Court, Ipoh; Civil Suit No: (MT4)22-8-2007]

Reported by Vani Krishnan

JUDGMENT

Abdul Malik Ishak JCA:

[1] Having read the draft judgment of my learned brother Mohamad Ariff Md Yusof J (now JCA), I have this to add by way of a supporting judgment. Section 8(3) of the Land Acquisition Act 1960 (Act 486) (hereinafter referred to as the "Act") stipulates that, "A declaration in Form D shall be conclusive evidence that all the scheduled land referred to therein is needed for the purpose specified therein". That should put an end to any challenge that may be advanced by the aggrieved land owner whose land has been acquired by the acquiring authority. However, *Honan Plantations Sdn Bhd v. Kerajaan Negeri Johor &*

Anor [1998] 3 CLJ 253; [1998] 2 MLJ 498, at p. 502, a decision of this court, categorically held that the aggrieved land owner could mount a challenge against the acquiring authority by establishing that the latter "had misconstrued its powers or had acted in bad faith or with gross unreasonableness" in acquiring the land of the aggrieved land owner.

[2] Salleh Abas CJ (Malaya) (later the Lord President of the Federal Court) in *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v. Ong Gaik Kee* [1983] 1 LNS 14; [1983] 2 MLJ 35, aptly said at p. 37 that:

> Every exercise of statutory power must not only be in conformity with the express words of the Statute but above all must also comply with certain implied legal requirements. The court has always viewed its exercise as an abuse and therefore treats it as illegal where the exercise is done for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness.

[3] Now, from the very outset, it was Ng Aun Say & Sons Realty Sdn Bhd ("NASSR") who sought the acquisition of PT 16225 for the purpose of constructing an access road to its housing project on Lot 371. The acquisition of PT 16225 was not sought by any government department or public authorities for public purposes in building schools or hospitals for that matter. It was acquired for the simple reason of providing access road to Lot 371 owned by NASSR.

[4] It was emphasised by the chartered land surveyor that the acquisition was not for the purpose of public utility because it served to benefit NASSR as the owner of Lot 371. In its report, the chartered land surveyor remarked that:

> The provision of the said road reserve will shift and enhance the value of Lot 371 as it will now enjoy direct frontage onto the main road and the service road. Further it will render Lot 371 ripe for immediate development.

[5] That being the case, it was argued that the acquisition cannot be for the purpose of any public utility. It was also argued that the acquisition was for the private development project of NASSR at the expense of Magnasari Sdn Bhd ("Magnasari").

[6] Sometime in April 2004, Majlis Perbandaran Manjung granted Magnasari's application to build temporary stalls on its land. And this approval constituted a "development approval" within the meaning of s. 2 of the Act, according to Magnasari. It was the stand of Magnasari that since the acquisition was not for the purpose of public utility and in the light of the development approval already granted to Magnasari prior to the acquisition, the state authority and the Land Administrator had no other discretion but to reject outright the application made by NASSR to acquire PT 16225. According to Magnasari, the outright rejection is mandated by s. 3(6) of the Act which stipulates as follows:

> Where in respect of any land applied for under subsection (2) there is a development approval granted to the registered proprietor and the acquisition is not for the purpose of public utility, the State Authority shall not consider the application, and in every such case the Land Administrator shall reject the application.

[7] It was argued that it was inherently wrong and unconscionable for the authorities to favour NASSR at the expense of Magnasari when both parties are developers. It was further argued that there was no justification to deprive Magnasari of its legitimate expectation of securing profit from the development of PT 16225 if the property was not acquired *(Stamford Holdings Sdn Bhd v. Kerajaan Negeri Johor & Ors* [1998] 1 CLJ 960; [1998] 1 MLJ 607, CA).

[8] By way of a rebuttal, learned counsel for NASSR submitted that no development approval was granted to Magnasari to develop PT 16225. Rather it was an approval by the Majlis Perbandaran Manjung to Magnasari to erect temporary structures which could be easily dismantled.

[9] Events showed that the proposal by NASSR to acquire PT 16225 was duly considered by the Jawatankuasa Khas Pengambilan Tanah ("JKPT"). In due course, JKPT recommended the compulsory acquisition of entire acreage of PT 16225 under s. 3(1)(b) of the Act to the State Authority. Section 3(1)(b) of the Act enacts as follows:

> 3. (1) The State Authority may acquire any land which is needed:
>
> (b) by any person or corporation for any purpose which in the opinion of the State Authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public.

[10] The declassified document emanating from the Pengarah Tanah dan Galian Negeri Perak to the Majlis Mesyuarat Kerajaan, Perak makes for an interesting reading material. *Inter alia*, it states:

> ... amat perlu untuk kemudahan laluan keluar masuk bagi penduduk di kawasan skim Perumahan berdekatan yang telah siap.

[11] The declaration that PT 16225 was compulsorily acquired was set out in Form D of s. 8(1) of the Act and it was duly gazetted on 29 May 2006. Such declaration, as stated earlier, constituted "conclusive evidence" that the scheduled land referred to therein is needed for the purpose specified therein. The compensation sum of RM274,600 was to be paid by NASSR to Magnasari. And for this purpose, NASSR lodged that sum with the High Court.

[12] In considering the issue of whether PT 16225 was validly acquired in accordance with the process of the law, it brings to the forefront the question of whether the State Authority had complied with the statutory procedure as set out under the Act in acquiring PT 16225 in favour of NASSR. NASSR's application came within the purview of s. 3(1)(b) of the Act read together with s. 4 and s. 3A(2) of the same Act where the State Authority acquired PT 16225 for the purpose of constructing an access road notwithstanding that "development approval" had been obtained for PT 16225.

[13] Now, the "development approval" of PT 16225 must be examined in the light of what the planning Authority had to say about the "cadangan gerai-gerai" proposed by Magnasari which was not supported by the planning authority as PT 16225 had been demarcated as "rizab jalan susur selebar 50 kaki". The planning authority further stated that any development needs to take into account the "jalan susur" and the remaining land (left over after taking out 50 feet) was too negligible for any development. Despite the negative remarks from the planning authority, Majlis Perbandaran Manjung had approved Magnasari's application for "gerai-gerai sementara".

[14] It is germane to mention that the word "sementara" is all pervading. It meant that the building structures approved to be built by the Majlis Perbandaran Manjung on Magnasari's land (PT 16225) was meant for temporary use only. It is for this very

A reason that Magnasari was charged in court for building structures on PT 16225 which were not in compliance with the approval of Majlis Perbandaran Manjung.

[15] In regard to the argument that there was a defect in the B composition of the JKPT in that there was non-compliance with s. 3C(2)(a)(i), (ii), (iii), (iv), (v) of the Act which affected the decision-making process of JKPT, it is ideal to reproduce *verbatim* s. 3C(2) of the Act:

> 3C. (2) The Committee shall:
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> C
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> (a) in the case of a State, consist of the following members:
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> (i) the State Secretary, as Chairman;
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> (ii) the State Director of Lands and Mines, as Secretary;
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> D
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> (iii) the Director of the State Economic Planning Unit or his representative;
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> (iv) the State Director of Town and Country Planning or his representative; and
>
> E
>
> (v) representatives of other related Government departments or agencies as may be determined by the Chairman.

[16] It is the state secretary who is the chairman of the committee. And it is he who must decide whether to appoint F "representatives of the related Government departments or agencies" to sit in the committee. The words in s. 3C(2)(a), (v) of the Act "as may be determined by the chairman" cannot be swept under the carpet, so to speak, by ignoring the power vested in the chairman to appoint "representatives of the related G Government departments or agencies" to sit in the committee.

[17] The plain meaning rule should be adopted in construing s. 3C(2)(a), (v) of the Act. As Tindal CJ said in the *The Sussex Peerage Case* [1844] 11 CI & Fin 85 at p. 143:

H

> The rule for the construction of Acts of Parliament is, that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are of themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and I ordinary sense. The words themselves do, in such case, best declare the intention of the Legislature.

[18] Lord Scarman in *Duport Steels Ltd and others v. Sirs and others* [1980] 1 All ER 529, HL, at p. 551 aptly said: A

> In this field Parliament makes and unmakes the law the judge's duty is to interpret and to apply the law, not to change it to meet the judge's idea of what justice requires. Interpretation does, of course, imply in the interpreter a power of choice where differing constructions are possible. But our law requires the judge to choose the construction which in his judgment best meets the legislative purpose of the enactment. If the result be unjust but inevitable, the judge must say so and invite Parliament to reconsider its provision. But he must not deny the statute. Unpalatable statute law may not be disregarded or rejected, merely because it is unpalatable. Only if a just result can be achieved without violating the legislative purpose of the statute may the judge select the construction which best suits his idea of what justice requires. B C D

[19] The learned Judicial Commissioner made a finding that the acquiring authority was biased and had acted in bad faith. However, I find that the statutory procedure adopted by the acquiring authority was above board and beyond reproach. At any rate, the constitution of the committee are matters that NASSR E has neither control nor knowledge of. The committee was legally constituted and was competent to decide and to receive the recommendation from the state economic planning unit.

[20] It is easy to allege that the committee was biased but it is F difficult to prove that the committee was in fact, biased. According to Frank J in *In re J P Linahan* 138 F2d 650, 651 (Circuit Court of Appeals, Second Circuit, Nov. 8, 1943):

> If, however, *'bias'* and 'partiality' be defined to mean the total absence of preconceptions in the mind of a judge, then no one has ever had a fair trial and no one ever will. G

[21] For the reasons adumbrated above, I now make those orders that were made by my learned brother Mohamad Ariff bin Md Yusof J (now JCA). H

Mohamad Ariff Yusof J:

[22] Two related appeals were heard together where the appellants were Kerajaan Negeri Perak, Pentadbir Tanah Daerah Manjung and Ng Aun Say & Sons Realty Sdn Bhd (in Appeal No: I A-01-141-11) and Ng Aun Say & Sons Realty Sdn Bhd (in

Appeal No: A-01-135-11) respectively. The respondent in the appeals was Magnasari Sdn Bhd (Magnasari) which was the registered proprietor of a parcel of land (HSD 15332 PT 16225) which became the subject matter of a compulsory acquisition under s. 3(1)(b) of the Land Acquisition Act 1960. The appellant in Appeal No: A-01-135-11, and respectively the third defendant in the writ action in the High Court in Ipoh, was the earlier mentioned Ng Aun Say & Sons Realty San Bhd ("NASSR").

Material Facts

[23] The background to the dispute between the parties is sufficiently analysed in the grounds of judgment of the learned Judicial Commissioner, and requires no extensive repetition. It suffices to summarise in the present grounds of judgment the following basic facts.

[24] Both NASSR and Magnasari were proprietors of adjoining lands in Daerah Manjung. The respondent's parcel is a rectangular strip of land with a *wide* frontage bordering the main Pantai Remis/ Segari road. In terms of the exact location, the land belonging to NASSR (Lot 371) lies behind Magnasari's land. The concerned land developed by NASSR lacked access to this main road. NASSR had built 12 units of shops on its land. The evidence showed there was some prior discussion between NASSR and Magnasari during which NASSR had offered to purchase that strip of land from Magnasari but the latter had requested an unreasonably high price. This observation could be seen in the declassified document from the Pengarah Tanah dan Galian Negeri Perak to the Majlis Mesyuarat Negeri Perak, reading:

> Pemohon telah berunding dengan Tuan Tanah Lot 9844 (PT 16225) untuk membeli Tanah tersebut untuk dijadikan simpanan jalan, tetapi Tuan Tanah tidak bersetuju untuk menjualnya malah menawarkan harga yang tidak munasabah. Salah satu cara untuk menyelesaikan masalah tersebut adalah melalui pengambilan balik Tanah di bawah Seksyen 3(l)(b) Akta Pengambilan Tanah 1960.

[25] NASSR had applied under s. 3(1)(b) to the State Authority with a proposal that PT 16225 be compulsorily acquired for the purpose of constructing an access road to the development project. The proposal was considered by the Jawatankuasa Khas Pengambilan Tanah ("JKPT") which recommended the compulsory acquisition of the entire 0.13 ha of PT 16225 under the abovesaid

statutory provision. In para. 7 of the earlier mentioned declassified document, it was noted for the consideration of the State Authority that the proposed acquisition was, in its own words, "amat perlu untuk kemudahan laluan keluar masuk bagi penduduk di kawasan skim Perumahan berdekatan yang telah siap."

[26] Majlis Mesyuarat Kerajaan Negeri Perak approved the proposed compulsory acquisition for the purpose of a road reserve for Mukim Pengkalan Baharu Daerah Manjung. The declaration of intended acquisition was gazetted on 29 May 2006. See Gazette Notification No: 826 published under s. 8 of the Act which states:

> Land acquisition under paragraph 3(1)(b) of the Land Acquisition Act 1960 (Act 486) for Simpanan Jalan Hakmilik H.S.(D) 15332 Lot 9844 (PT 16225) Mukim Pengkalan Baharu, Daerah Manjung.

[27] The approval was granted with a condition that NASSR pay compensation to Magnasari. The compensation sum of RM274,600 was to be deposited by NASSR with the High Court.

[28] Lot 9844 (PT 16225) was part of an Original Lot (Lot 1415) which was originally agricultural land. Following an application for change of land use from agricultural to commercial ("untuk didirikan bangunan perniagaan"), part of the parcel was surrendered to the State Government as land reserve for road widening. The remainder of the parcel became Lot 9844 (PT16225). It was also in evidence that in April 2004 Majlis Perbandaran Manjung had granted Magnasari approval to build temporary stalls on the land. Magnasari submitted that this approval constituted "development approval" within the meaning of s. 2 of the Land Acquisition Act 1960, and this meant that the State Authority had to consider the provisions of s. 3A(1), (2) and (3) as well as s. 3(6) of the Act. Section 3 (6), for instance, provides:

> (6) Where in respect of any land applied for under subsection (2) there is a development approval granted to the registered proprietor and the acquisition is not for the purpose of public utility, the State Authority shall not consider the application, and in every such case the Land Administrator shall reject the application.

[29] This was a writ action, but parties had consented at the High Court to dispense with calling witnesses and to rely purely on the agreed documents in Bundle D, encl. 68 which contained the letter from PTG, "Kertas Mesyuarat Kerajaan" and the State Government Gazette No: 826 dated 22 June 2006, together with the agreed facts. The learned Judicial Commissioner approached the main issue in the case as essentially one of law.

The Issues

[30] The appeal was heard on essentially two main issues, namely (1) whether the procedure followed by the State Authority in considering and approving the application by NASSR complied with the statutory procedure under the Land Acquisition Act 1960, and (2) whether the acquiring authority had misconstrued its powers, acted in bad faith or with gross unreasonableness. In the High Court, the learned Judicial Commissioner had categorised the main issue as "Sama ada tanah plaintiff telah diambil balik secara sah oleh PBN mengikut undang-undang".

The High Court Decision

[31] In the High Court the learned Judicial Commissioner allowed Magnasari's claim for a declaration that the decision of the State Authority to acquire the land was unlawful and void, granted an order that the endorsement of intended compulsory acquisition on the document of title be cancelled and further ordered that damages as assessed by the Registrar be allowed, together with costs of the action as assessed/agreed. In the opinion of the learned Judicial Commissioner, the State Authority had acted in bad faith and was biased in approving the application by NASSR, adding that the facts tended to show a propensity of bias towards the third defendant (NASSR) in order to assist it without taking into account the interests and rights of the plaintiff (Magnasari). The learned Judicial Commissioner referred, in this context, to "keghairahan PTG membuat syor bagi membantu defendan..." See in this connection, p. 21 of the grounds of judgment, second paragraph. The nub of the decision of the High Court can be extracted from the following passage of the grounds of judgment:

> Berdasarkan fakta kes, Mahkamah mendapati ada benarnya dakwaan Plaintif bahawa alasan keputusan PBN mengambil balik tanah Plaintif untuk tujuan public utility adalah sekadar alasan yang tidak menepati maksud seksyen 3(1)(b) Akta. Atas imbangan

kebarangkalian, adalah didapati pembinaan jalan akses tersebut bukan untuk public utiliti tetapi untuk kemudahan dan faedah Defendan Ketiga dalam usaha untuk menjamin keuntungan projek pembangunannya. Fakta-fakta yang ada, cenderung menunjukkan sikap bias (berat sebelah) PBN dalam membantu Defendan Ketiga tanpa mengira kepentingan dan hak Plaintif... (pp. 20 to 21 of the grounds of judgment).

[32] There were several specific findings which led the learned Judicial Commissioner to allow the plaintiff's claim. From an analysis of the judgment, the following findings emerged:

(1) The State Authority failed to adhere to the mandatory statutory procedure as provided under Part II of the Act, in particular in relation to the consideration, determination and action required of the state economic planning unit (UPEN) before a recommendation was made to the JKPT ("Jawatankuasa Khas Pengambilan Tanah") under s. 3A(7).

(2) The application by the third defendant (NASSR) was brought under s. 3(1)(b) read in conjunction with s. 4 and s. 3A(2) of the Act whereby the State Authority acquired the land for the purpose of "public utility" to construct a road on a parcel of land which had been given a development approval.

(3) The third defendant had applied to the Land Administrator with the proposal to acquire the plaintiff's land for the purpose of allowing main road access to the potential occupiers on the 12 shop lots which were built on the adjoining land at the back of the plaintiff's land on the basis that these potential occupiers of the shop lots were included within the meaning of the phrase "any class of the public" under s. 3(1)(b) of the Act.

(4) By the scheme of the Act in Part II, the Land Administrator was required to forward the application to the state economic planning unit for its consideration in accordance with s. 3A(1)(a), (b), (c) and (d) which required the state economic planning unit to consider the application in relation to the aspects of (a) public interest, (b) capacity and capability of the applicant to carry out the purpose for which the land was to be acquired, (c) feasibility of the project, and (d) the development approval granted to the registered proprietor.

(5) Since it was established that the registered proprietor, ie, the plaintiff, had been granted a development approval to construct the temporary stalls on the land, the state economic planning unit had to determine whether it was appropriate in the circumstances for the registered proprietor to participate "in the project" for which the land was intended to be acquired, consistent with the statutory requirement under s. 3A(2), reading:

> Where there is a development approval granted in respect of any land and the acquisition is for the purpose of public utility, the State Economic Planning Unit ... shall determine whether it is appropriate in the circumstances for the registered proprietor to participate in the project for which the land is intended to be acquired.

(6) Reading para. 3.3 of the Kertas Mesyuarat Majlis, the state economic planning unit had wrongly interpreted the provisions of s. 3A and had failed to perform its statutory duties under subsections (2) and (3) to come to a determination on whether it was appropriate in the circumstances for the plaintiff to participate in the project ie, the construction of the access road. The said para. 3.3 read:

> Proses perundingan antara tuan tanah dan Ng Aun Say & Sons Realty Sdn Bhd adalah tidak perlu kerana projek yang akan dilaksanakan adalah bagi tujuan awam dan tidak sesuai untuk tuan tanah melibatkan diri.

(7) There was a defect in the composition of JKPT since there was non-compliance with s. 3C(2)(a)(i), (ii), (iii), (iv), (v) of the Act which affected the decision-making process of JKPT when it considered the recommendation of the state economic planning unit (UPEN). The state secretary as chairman of the committee, it was argued, had to appoint, consistent with the statutory requirements, "representatives of the related government departments or agencies as may be determined by the chairman." Section 3C(2) of the Act provides in full:

> (2) The Committee shall:
>
> (a) in the case of a State, consist of the following members:
>
> (i) the State Secretary, as Chairman;
>
> (ii) the State Director of Land and Mines, as Secretary;

(iii) the Director of the State Economic Planning Unit or his representative; A

(iv) the State Director of Town and Country Planning or his representative; and

(v) representatives of the related Government departments or agencies as may be determined by the Chairman. B

[33] The learned Judicial Commissioner found the composition of the committee defective because it had included only the persons listed in subsection (2)(a)(i)-(iv) with the exclusion of the representatives supposed to have been appointed under (v). C

[34] Based on these findings, the learned Judicial Commissioner concluded that there existed a serious non-compliance with the statutory provisions and a misconstruction of the law in respect of the functions and powers of the agencies of the State Authority when it supported the application of NASSR in a case which involved a "development approval" granted to Magnasari, and in the opinion of the learned Judicial Commissioner, the State Authority could not consider the application and the land commissioner should have dismissed the application without making any recommendation. The learned Judicial Commissioner quoted expressly s. 3(6) of the Act, which read: D E

> (6) Where in respect of any land applied for under subsection (2) there is a development approval granted to the registered proprietor and the acquisition is not for the purpose of public utility, the State Authority shall not consider the application and in every such case the Land Administrator shall reject the application. F

[35] As earlier stated, the learned Judicial Commissioner also found that the State Authority had acted in bad faith with an element of bias in its eagerness to approve the second defendant's application. In support of his conclusions on the facts and the law, the learned Judicial Commissioner quoted the Federal Court decision in *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v. Ong Gaik Kee* [1983] 1 LNS 14; [1983] 2 MLJ 35 and the Court of Appeal decision in *Honan Plantations Sdn Bhd v. Kerajaan Negeri Johor & Anor* [1988] 3 CLJ 253; [1988] 2 MLJ 498. The first authority, *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang, supra,* was cited for the proposition that the exercise of G H I

statutory power is illegal if done for an inadmissible purpose, or on irrelevant grounds, or without regard to relevant considerations, or with gross unreasonableness. *Honan Plantations, supra*, was cited to support the finding that while an acquisition under the Land Acquisition Act could not be challenged generally, such acquisition could still be challenged if a plaintiff established that the acquiring authority "had misconstrued its powers or had acted in bad faith or with gross unreasonableness."

Findings And Decision On Appeal

[36] As stated earlier, this case was heard on the basis of agreed facts and agreed documents, and as such no question of the High Court having an audio - visual advantage arose for consideration. In relation to the law, the relevance of the Court of Appeal decision in *Honan Plantations, supra,* was not disputed. Despite s. 8(3) of the Act, which provided that a declaration in Form D "shall be conclusive evidence that all the scheduled land referred to therein" was needed for the purpose specified therein, an acquisition could still be challenged if the aggrieved party could establish that the acquiring party had misconstrued its powers, or acted in bad faith, or acted with gross unreasonableness. The learned Judicial Commissioner found elements of bad faith, misconstruction of statutory powers and gross unreasonableness established on the evidence based on a reading of the documents and inferences therefrom. We were unable to agree with the learned Judicial Commissioner's findings and inferences, and particularly with respect to his reading of the provisions in s. 3C(2) of the Act, which we found to be central to his decision. The reference in para. (v) in subsection (2) to "**representatives of other related Government departments or agencies as may be determined by the chairman**" (emphasis added) could not on a proper interpretation be taken to mean the chairman must appoint representatives from related Government departments or agencies. This was a matter of statutory discretion conferred on the chairman and not a compelling mandatory requirement, and unless the context clearly indicated his discretion was a narrow, and not a broad, one, it should be given its broadest signification. Thus we could not agree with the conclusion of the learned Judicial Commissioner that the committee was incompetent to decide or to receive the recommendation from the state economic

planning unit. The same approach should apply in construing the discretionary powers granted to the Land Administrator and the state economic planning unit when considering s. 3(6) and s. 3A(2). When administrative powers are granted to agencies of the Government, they have to be properly read against the overall context of the relevant statute, and the various relevant statutory provisions have to be read harmoniously. It cannot be the proper function of the court to narrow down an ostensibly broad conferment of administrative powers, since to do so will defeat the statutory objective. Hence, within the context of the Land Acquisition Act, it could not be the case that the Land Administrator must reject outright an application for compulsory acquisition where there was a development approval granted to the registered proprietor of the land intended to be acquired. If the acquisition was for the purpose of public utility, and despite the existence of a development approval in respect of the land, the state economic planning unit had to determine "whether it is appropriate in the circumstances for the registered proprietor to participate in the project for which the land is intended to be acquired." The statutory formulae did not prohibit a compulsory acquisition outright simply because there existed a development approval granted in respect of the land, but made the intended acquisition subject to the requirement of "public utility" and a consideration whether it would be appropriate in the circumstances for the registered proprietor "to participate in the project'. Given the breath of this power, we were of the view that it was lawful, within the statutory context, for the state economic planning unit to have decided that in the circumstances, where the land was to be acquired to construct an access road, it was not necessary to have the participation of the registered proprietor since it would not be appropriate in the circumstances. In regard to the finding that the said authority was biased and acted in bad faith, we could not find any fault in the statutory procedure adopted. It was not as if the registered proprietor was ridden roughshod by the said authority to benefit NASSR. It was clear from the evidence that it was necessary to have an access road to the main road to allow access to, and from, the 12 units of shop houses. This would satisfy the requirement of "public utility". We noted that the definition of "public utility" included "public works" under s. 2(1) of the Land Acquisition Act.

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Conclusion

[37] For the abovestated reasons, there were major errors of law and a misappreciation of the evidence which invited appellate intervention. The evidence in relation to bad faith and bias was singularly absent, and we felt the findings of the learned Judicial Commissioner were therefore perverse and against the weight of evidence.

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[38] Both appeals in Rayuan Sivil No: A 01-135-2011 and Rayuan Sivil No: A 01-141-2011 were thus allowed by unanimous decision with costs of RM5,000. The decision of the High Court was set aside. The deposit was ordered to be refunded to NASSR, being the third appellant in Appeal No: A-01-141-2011 and the appellant in Appeal No: A-01-135-2011. This judgment received the concurrence of my learned brother Linton Albert, JCA.

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[39] My learned brother Abdul Malik bin Ishak, JCA has since written a supporting judgment.

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